Petition

81-2009

No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

FLORENCE M. YEO,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN

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QUESTIONS PRESENTED

1. Whether it is a violation of the equal protection clause of the United States Constitution for a local ordinance to prohibit the ownership of more than a specific number of dogs in a residence by a private owner when this ordinance contains no reference to nuisances or dangers to the general public.

2. Whether it is a violation of the due process clause of the United States Constitution for a local ordinance to create the conclusive presumption that just because a person keeps more than two dogs, he is necessarily involved in breeding, boarding, selling, showing or sporting dogs.

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IN THE

SUPREME COURT OF THE UNITED STATES

NO.

FLORENCE M. YEO,
Petitioner,

v.

THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent

PETITION FOR WRIT OF CERTIORARI

To the Justices of the Supreme Court of the United States:

Petitioner, Florence M. Yeo, respectfully prays that a Writ of Certiorari issue to review the decision and order of the Michigan Court of Appeals, which upheld the decision of the 17th District Court of Michigan. Petitioner's Leave to Appeal to the Michigan Supreme Court was denied. Petitioner was charged with violation of Section 3-301 of the Redford Township Code.

OPINIONS BELOW

The District Court found that the Petitioner was in violation of the statute, that the statute was constitutional. This opinion is reproduced as Apendix "A" of this Petition.

The Michigan Court of Appeals affirmed the decision of the District Court. This opinion is reproduced as Apendix "B" to this Petition.

The Michigan Supreme Court denied Petitioner's Petition for Leave to Appeal by Order of Court numbered CR32-5000. This Order is reproduced as Apendix "C" to this Petition.

JURISDICTION

The statutory provision respectfully believed to confer on this court jurisdiction to review the judgment in question by Writ of Certiorari is found at 28 U.S. C. §1257(3).

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED IN THIS MATTER

Township of Redford, Local Ordinance Number 150, Section 3-301 of the Redford Township Code states as follows:

> "No person shall establish a dog kennel in this township without first obtaining a kennel license,..
> .....
> All persons owning, possessing, harboring or keeping on their premises three or more dogs, six months old or older, shall be presumed to have established a dog kennel. No such dog kennel shall be established in any R-1 or R-2 Residential District or Residential Farm District, as prescribed by the zoning ordinance of this township."

The Fifth Amendment to the Constitution of the United States of America, cited as United States Code Service Amendment Five Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or endictment of a Grand Jury, except in cases arising in the land or naval forces, or in the time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself,

nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the Constitution of the United States of America, cited as United States Code Service Amendment Five Constitution, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of that state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any states deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

The Defendant, Florence M. Yeo, was issued a traffic citation by Redford Township, Michigan, on August 22, 1978, for violation of local ordinance No. 150, because she allegedly kept more than three dogs on her single family residence. The ordinance in question, Section 3-301 of the Redford Township Code, provides;

> "No person shall establish a dog kennel in this township without first obtaining a kennel license,... All persons owning, possessing, harboring or keeping on their premises three or more dogs, six months old or older, shall be presumed to have established a dog kennel. No such dog kennel shall be established in any R-1 or R-2 residential district or any R-1-F residential farm district, as prescribed by the zoning ordinance of this township."

No other charges were filed against the defendant.

Florence M. Yeo has been a resident of the Township of Redford since 1951. Her home is situated in a residential neighborhood in a subdivision of moderately sized homes, most of which range from twenty-five to thirty years of age. She has been a dog lover for all of those thirty-one years and had never been charged with any violation of any dog ordinance or nuisance ordinance of the Township until the present action.

Upon learning of the existance of the local ordinance after the issuance of the traffic citation, she immediately applied to the Township for a kennel license. However, she was denied this license solely because she lived in a R-1 residential district as determined by the local zoning ordinance. During her thirty-one years of residence on the property in question, Mrs. Yeo has owned a varying number of dogs.

Mrs. Yeo has contended that the ordinance is invalid on its face because it arbitrarily and unreasonably prohibits the ownership of dogs without relation to the health, safety and welfare of the community and thereby violates the due process of law and equal protection clauses of the United States Constitution.

This matter was tried in the 17th Judicial District Court, Michigan, on November 13, 1978, at which time the defendant was found guilty and placed on one year's probation and assessed costs totaling Eighty Dollars ($80.00), with the Appeal Bond set at Two Hundred Dollars ($200.00).

Within the time set by Court rule for taking an appeal by right, Mrs. Yeo posted, in cash, the two hundred dollars appeal bond, filed her Claim of Appeal and Brief on Appeal. On october 20, 1980, oral arguments were heard upon this cause, and the Michigan Court of Appeals rendered its decision affirming the decision of the 17th District Court of Michigan.

On February 5, 1982, Mrs. Yeo's Petition for Leave to Appeal to the Michigan Supreme Court was denied. Application for

a Stay of Mandate of the sentence of the 17th Judicial District Court was denied by the Michigan Supreme Court on March 24, 1982, and Mrs. Yeo was given sixty days to comply with the statute. Subsequently, Application for Stay of Mandate of the sentence of the 17th Judicial District Court was applied for to the United States Supreme Court.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

The Township of Redford is one of thousands of municipalities located throughout the State of Michigan and the United States which have passed ordinances of either a zoning nature or general regulatory nature prohibiting the ownership or keeping of more than a specific number of dogs in a residence by a private owner. These ordinances define a regulated dog as a canine of a minimum age of from six weeks to twelve months and prohibit the ownership or keeping of more than one, two, three or six dogs on a single premises. The Township's ordinance defines the keeping of more than two dogs as a kennel and prohibits the establishment of a kennel in certain residential or residential farm districts, and thus has the same effect as a blanket prohibition against the keeping of more than a specific number of dogs for these residents. These ordinances contain no standards of defining nuisances or danger to the general public and require no commercial activity of any type, although they are claimed to be based upon the police powers of the municipality.

The petitioner does not claim that dogs should not be regulated. Rather, she only asks that this regulation be necessary and reasonable to protect the public good. Certainly, laws prohibiting dogs from running at large, requiring vaccination against rabies and for prohibiting sanitary and noise nuisances are reasonable. Similarly,

the proper limit on the number of dogs which may be kept or owned should be that number which the owner may reasonably keep and properly maintain, and if not so properly kept or maintained, the owner should run afoul of the law on those issues alone and not upon the question of arbitrary numbers. The Township of Redford's ordinance, like all similar ordinances, is unconstitutional because it arbitrarily sets a numerical limit on the keeping and/or ownership of otherwise noncontraband property without reference to any standards commercial or otherwise. Such ordinances imply a nuisance per se where no nuisance exists.

A possible extension of such ordinances could be to legislate against the keeping of any dogs in a village, city, county or state.

I.

THERE ARE CONFLICTS AMONG THE STATE COURTS REGARDING THE PROPRIETY OF LOCAL ORDINANCES LIMITING THE NUMBER OF DOGS THAT MAY BE OWNED OR KEPT, SO THAT REVIEW ON WRIT OF CERTIORARI IS NEEDED AND PROPER.

There are conflicts among state courts regarding the issue presented before the Court in this Petition. On March 31, 1982, the United States Supreme Court received a Petition for Writ of Certiorari, entitled Joseph R. Fiala vs. Village of Carpentersville, concerning a similar ordinance located in the Village of Carpentersville, Illinois. Not only will a decision concerning these types of ordinances literally affect millions of dog owners across the nation, but it will create uniformity among state decisions, which is missing today.

In the case of Commonwealth vs. Gardner, 74 D & C 539 (Pennsylvania Q. S. of Montour County 1950), a local ordinance prohibited the keeping of more than six dogs over the age of six months. The ordinance was challenged and the court noted that if the ordinance had provided that the keeping of noisy dogs or dogs that habitually bark at night a nuisance, the ordinance would have been proper, because in order to determine whether or not the ordinance was violated would be a question of fact which would have to be proved upon a hearing. The court stated that it had generally been held that whether or not an act constitutes a nuisance must be judicially determined in each particular case. However, since the

ordinance did not explicitly enumerate standards in which to determine whether a nuisance existed, the mere keeping of more than six dogs over six months of age was deemed a nuisance per se. The court labeled the exercise of the police power in this way both unreasonable and arbitrary, and concluded its opinion by stating the crucial fact that a declaration in an ordinance that a thing is a public nuisance does not make it so, if it is not a nuisance in fact, Gardner pp. 545, 546.

The Supreme Court of Wisconsin came to an opposite conclusion in the case of State v. Mueller (1936) 265 N.W. 103. Here, the ordinance in issue stated that no more than two dogs over the age of three months could be kept within any residential district within the town of Muskego. It defined a residential district as any part of the town on which two or more residences are occupied within a distance of one thousand feet of each other. In responding to the constitutional attack of the ordinance by the Defendant, the court made two observations. First, it noted that the police power of the state had been used to regulate and control property in dogs to a greater extent than property in any other class of domestic animals, and that the town board had authority to legislate on this subject. Second, it made general conclusions as to dogs, indicating that they were a peculiar kind of property, capable of increasing rapidly, usually allowed to run at large, and that in a domestic state they retained to a considerable degree their wild, mischievious and ferocious natures. The court stated that it was a matter of common observation that

the herding together of even the least offensive animals within a city may be conducive to noise, foul odors, and insect life, and may be a source of great discomfort to persons residing in the vicinity. From these general conclusions, the court held that the enactment of the ordinance was not an unreasonable exercise of the power vested in the town to pass ordinances for the keeping and regulating of dogs within the town.

These two state court opinions show the distinct differences of opinion running throughout different states regarding the possession of dogs. Besides the obvious conflict between the states of Wisconsin and Pennsylvania, conflicts have arisen in California and Missouri in recent years, City of Fredericktown v. Osborn, 429 S.W. 2d 17 (1968), Miller v. City of Arcadia, 9 P. 2d 587 (1932). In Osborn, the court held that a local ordinance could not restrain a person from keeping more than one dog as a pet and in Miller, it was found that the keeping of animals may be prohibited, when the keeping affects the public safety or health, but only upon a showing that it does so. Included in this conflict will be the Petition presented before this court today. Although, the Township of Redford's ordinance states the ownership of three or more dogs is considered a kennel, it accomplishes the same result as those statutes which prohibit a specific number of dogs, by denying kennel licenses to those who live in zoned residential or residential farm districts.

This type of zoning prohibition exists

in communities located in a majority of the states. Although the number of dogs permitted varies, each ordinance arbitrarily sets a cut-off point beyond which the keeping of an "excess number" of dogs constitutes a municipal offense. We emphasize that the court has received a Petition involving similar issues as that placed before the court today, on March 31, 1982, entitled Joseph R. Fiala v. Village of Carpentersville. The time has come for this issue to be clarified by this court.

II.

THE ORDINANCE CREATES A PRESUMPTION WHICH VIOLATES DUE PROCESS OF LAW UNDER THE UNITED STATES CONSTITUTION.

The ordinance in question provides in pertinent part:

> "Kennel means any establishment wherein or wherever three or more dogs are kept for the purpose of breeding, boarding, sale, show or sporting purposes." Section 1-101(4).

Thus, the ordinance creates a conclusive presumption that if a person has three or more dogs, he has a kennel, and if his land is not zoned for kennels then he is in violation of the ordinance. A violation of this ordinance is a crime which may be published by afine not exceeding One Hundred Dollars ($100.00) and costs of the prosecution or imprisonment for ninety (90) days.

Conclusive presumptions have been forbidden in several states by this court. United States. Romano 382 U.S. 136 (1956). This court in Romano, in discussing the test for constitutionality of a statute which included a conclusive presumption, stated;

> "A legislative determination would not be sustained if there was no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of a lack

> of connection between the two in common experience. Where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them, it is not competent for the legislature to create it as a rule governing the procedure of courts."

In Romano, this court found that there was no rational connection between the proven fact (possession of two ounces of marijuana) and the presumed fact (intent to deliver), in light of common experience.

The instant case can be compared quite easily with the marijuana case of Romano in that both have statutory presumptions which force a jury or judge to accept the ultimate fact (guilty of a crime) when the initial fact is proven. It is the petitioner's position that there is no rational connection between the established fact, possession of three or more dogs, and the presumed fact, that she is operating a kennel. If there is no rational connection between the established fact and the presumed fact, the petitioner is denied due process because the court is allowed to convict her on the basis of insufficient evidence as to one of the elements of that crime for which she is charged.

The presumption that a person is breeding, boarding, selling, showing or sporting dogs because she owns or keeps more than two dogs cannot be upheld. The dogs may be kept as pets, they may be kept for protection, or for companionship, or they may be kept as "seeing" eye dogs or "hearing" dogs

for the disabled. It would be mere speculation to connect the presumption with common experience. In light of Supreme Court dictates, there is no rationality between the facts proved (three or more dogs) and the ultimate fact presumed (breeding, boarding, selling, showing or sporting by the defendant), and thus the ordinance should be struck down.

There is less rationality between the facts proved (ownership of three or more dogs) and another presumption (existence of a nuisance). At no time does the ordinance claim that a nuisance exists, nor are any standards created to judge whether a nuisance exists. Yet the implication is that three or more dogs are a nuisance per se. This is improper and irrational.

III.

THE ORDINANCE IS A VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

This municipal ordinance, in effect, arbitrarily bans the mere ownership of three dogs without any other relation to the public's health, comfort, morals or welfare, and is therefore, invalid on its face as a violation of the Equal Protection Clause of the United States Constitution.

Zoning ordinances are enacted by municipalities in the exercise of their police power as delegated by the State and this power to enact zoning ordinances must be exercised reasonably and not arbitrarily or capriciously. Nectow v. Cambridge 277 U.S. 183 (1927). Any ordinance enacted pursuant to the police power of a municipality must bear a reasonable and material relation to the public health, safety and welfare of the municipality. Moore v. East Cleveland 431 U.S. 404 (1977). The mere possession or keeping or the maintenance of a dog kennel does not constitute a nuisance per se since it is a lawful business activity. Hutley v.Forney 283 A2d142 (1971), 66 C.J.S. Nuisances, 532 at 786. Merely declaring something a nuisance does not make it so. Where there is no material relation to the public good, a municipality cannot, under the guise of a zoning regulation, inflict damage on the owner of property.

This position is analogous to the case of Hahn v. Brooklyn, 78 O.L.A. 429, 143 N.E. 2d 359 (1958), where an ordinance prohibited the keeping of pigeons on a lot less than eight thousand square feet of area. The court held that the ordinance was unconstitutional, arbitrary and unreasonable because there was no evidence that the Defendant's pigeon loft was unsanitary or in any way a nuisance. In writing the majority opinion for the court, the late Judge Lybarger stated that a municipal corporation cannot make something illegal merely by having their counsel declare it to be detrimental to health and welfare.

Similarly, in the case of City of Arkadelphia v. Clark 52 Ark. 23, 11 S.W. 957 (1889), a city ordinance provided that it shall be unlawful for any person or persons to own, keep or raise bees in the City of Arkadelphia, the same having been declared a nuisance. 11 S.W. at 957. Without citing a specific provision of the United States or Arkansas Constitutions, the Arkansas Supreme Court held:

> "Neither the keeping, owning, nor raising of bees is in itself a nuisance. Bees may become a nuisance in a city, but whether they are so or not is a question to be judicially determined in each case. The ordinance under consideration undertakes to make each of the acts named a nuisance, without regard to the fact whether it is so or not, or whether bees in general have become nuisances in the city. It is, therefore, too broad, and is invalid."

The case before the United States Supreme Court which is presented today is not unlike that involved in Clark or Hahn.

The statute involved with the Township of Redford makes the mere ownership of a specific number of dogs in a residential or residential farm district, a violation and thus indicates that the ownership of a specified number of dogs is a nuisance per se. Ms. Yeo has not been charged with keeping either a public or private nuisance. This type of prejudicial and tyrannical legislative action generally attacks only the responsible dog owners, and denies them of their equal protection of the laws. It leads to selective enforcement and harassment by local governmental officials. Finally, this type of legislation escalates neighborhood disputes.

Statutes or ordinances which affect one class and not another are permissable under the law (such as the differences between dogs and cats), but only where classifications can be sustained upon real differences between the classes, and where regulation of a particular class existing from others is reasonably related to the evils to be remedied by the statute or ordinance. Village of Belle Terre v. Boraas, 416 U.S. 1 (1974). The classification must not be arbitrary, but must be reasonable and natural and based on some natural principles of public policy. Griffin v. People of the State of Illinois, 351 U.S. 12 (1955).

Applying these principles of constitutional law to the classifications stated by the ordinance in question, we must look to

see whether there is any natural principle of public policy or real differences between the classes distinguished in the Carpentersville ordinance.

First, let us look at what the ordinance permits. Under the ordinance, any person can live or move into residential property in the Township of Redford, and can own, board or breed, two adult dogs (those under three months of age), and still not be classified as a criminal. On the other hand, if that same person was to allow one of his non-adult dogs to become an adult dog, he would be classified as a violator. SImilarly, a person who owns three adult dogs, let us say, for example, all small male dogs (and, therefore, not likely to ever have puppies), would be classified as a violator even though he may have less dogs than the aforementioned unclassified person with the two adult dogs and unlimited non-adult dogs. This does not seem to be a real difference in the classes of dog owners.

Dogs may also vary in size from the tiny (two to three pounds) to the large (two hundred fifty pounds). Dogs may be noisy and nervous, or silent and placid. The range is considerable. One large, noisy dog may constitute a nuisance. Four small, quiet dogs may never be noticed.

It must be stressed from the wording of the definition that commercial activities are not isolated in regard to the definition. That is, a person does not have to board, breed or sell dogs to be a violator, but he merely has to

own and keep three adult dogs. It is also to be pointed out that under certain facts and circumstances, the keeping of two dogs or less could be a nuisance to a neighborhood if they were kept in an unsanitary condition which was detrimental to the public health and that the keeping of three or more dogs could be accomplished in a totally sanitary situation which would create no harm to the public health and in conditions which would create no nuisances. The Towhship's ordinance requires no evidence of nuisance, be it sight, smell or noise. No consideration may be given to the manner in which the dogs are maintained, the effort of the owner to minimize or negate the possibility of inconvenience to neighbors or any other fact or circumstance on a case by case basis.

The petitioner, Ms. Yeo, challenges this ordinance and the Township to distinguish between a person who owns two adult dogs, regardless of how they may be kept or maintained. it cannot be successfully maintained that there is a reasonable difference between these two people.

The petitioner does not challenge the existence of laws defining and prohibiting nuisances, both public and private. However, a law banning the mere keeping of more than a certain number of otherwise lawful property goes beyond the proper limits of government.

CONCLUSION

This case presents issues of the utmost public importance to millions of dog owners across the United States. Ordinances, like that present in the Township of Redford, are prejudicial and tyranical, and are used by local government officials to selectively enforce and harass responsible dog owners. The enforcement of these statutes denies citizens of their protection of the laws simply because they choose to have more than a specific number of dogs on their property and regardless of whether or not they create a public nuisance.

Wherefore, Petitioner prays that this Court's Writ of Certiorari issue and that the judgment below be reversed.

Respectfully submitted,

Michael M. Ushijima,
Attorney for Petitioner

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Timothy M. Bopp

Appendix

APPENDIX "A"

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellee,

vs.

FLORENCE M. YEO,

Defendant-Appellant.
_____/

Civil Action

No. 78-838,
369-AR

Judge Roland
L. Olzark
(P 18490)

OPINION

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STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff-Appellee,

vs.

FLORENCE M. YEO,

Defendant-Appellant.

Civil Action

No. 78-838,
369-AR

Judge Roland
L. Olzark
(P 18490)

OPINION

This is an appeal by the defendant from a conviction of violating Redford Township Ordinance No. 150, Section 3-301, which restricted the keeping of three or more dogs, six months old or older, on properties zoned R-1, R-2, or R-1-F, without a kennel license.

The facts, as set forth in defendant's brief, indicate that she has been a resident of the Township of Redford since 1951. Her home is situated in a residential neighborhood in the area of Schoolcraft and Inkster Roads, in a subdivision of moderately sized homes, most of which are 25 to 30 years old. She is involved in the hobby of exhibiting and occasionally breeding American Kennel Club registered collies and, for this purpose, has acquired a number of dogs over the years.

The complaint was filed by her immediate neighbor; i.e., Ms. Jessie Wolke, who has lived in her home since 1957 and who, it is claimed, had maintained a friendly relationship with the defendant throughout the years. On August 22, 1978, however, on the complaint of Ms. Volke, a violation notice was issued to the defendant by Mr. Max King, Redford Township Animal Control Officer, and after trial in the 17th District Court, the defendant was found guilty.

The defendant first contends that the ordinance, which limits the number of dogs one may keep to two is an arbitrary regulation and an unreasonable exercise of police power. The Court finds this argument to be without merit since the regulation of dogs is typically a matter subject to the exercise of police power, as indicated by the Michigan Supreme Court in Bugai v. Rickert, 258 Mich 417. The Court therein noted that while there is property in dogs it is of an imperfect or qualified nature and they may be subjected to peculiar and drastic police regulations by the state without depriving their owners of any federal right (see also Van Horn v. People, 46 Mich 183; and Finley v. Parker, 219 Mich 442).

In addition to the fact that the regulation of dogs is a matter properly within the ambit of the police power it is equally clear that the instant regulation, as prescribed by the ordinance, is a reasonable one. Although no extant Michigan stare decisis appears with respect to ordinances regulating the number of dogs, several jurisdictions have sanctioned such controls

as reasonable exercises of the police power. State v. Mueller, 265 NW 103 (SC Wisc, 1936), is illustrative, as is Miller v. City of Arcadia, 9 P 2d 587, 121 Cal App 660 (1932); State v. Beckert, 61 A 2d 213, 137 NJ Law 562 (1948). In the light of the foregoing precedent and considering that a presumption of constitutionality attends validly enacted ordinances, it appears Appellant has failed to demonstrate the infirmity of the legislation, as is her burden to so do, Portage Twp v. Full Salvation Union, 318 Mich 693 (1947).

Appellant further asserts that inasmuch as she has been in continuous violation of the ordinance for 18 years the prosecution complained of is time barred. Appellant relies on MC.A 66.6 which pertinently provides:

> "66.6 Prosecution of violations
>
> Sec. 6. Prosecutions for violation of the ordinances shall be commenced within 2 years after the commission of the offense, and shall be brought within the village, or in the township in which the village, or some part thereof, is located. Any justice of the peace of the village or of the township in which the village or some part of it, is situated, shall have the authority to hear, try and determine all causes and suits arising under the ordinances of the village, and to inflict punishment for violations thereof as provided in the ordinances."

The reliance is misplaced. The complaint of August 22, 1978, as well as the evidence adduced at trial addressed the commission of a crime at that time. The fact that Defendant may have violated the ordinance in the past is without moment. Defendant's further argument that she had with time acquired a "variance by prescription" is without legal support. Even assuming such a doctrine to exist it would nonetheless not bear upon the application of a criminal ordinance.

Defendant also contends there was insufficient evidence to sustain a conviction. Specifically, the allegation addresses the quantum of proof concerning the ages of the dogs. The pertinent portion of the ordinance states ". . . three or more dogs, six months old or older. . ." The testimony of Witness Wolke established said element:

> "Q Okay. Again, specifically about the eleven dogs that you've testified to, you've seen those eleven dogs for a period of six months or greater?
>
> A Yes, I have." (TR 25)

Said testimony was corroborated by that of Witness Bricely:

> "Q Okay. Prior to that date, prior to August 22nd, had you seen those same dogs any time prior to then?
>
> A Yes, I did.

Q What is the earliest date and time that you saw those same dogs?

"A Oh, I've been seein' 'em for the past three years that I know of.

Q Specifically in terms of January or February of this year, did you see the same dogs?

A Yes, I did.

Q Which dogs did you see in January or February?

A I've seen the black-and-white. I've seen the tan-and-white or brown-and-white and the silver -- what I call silver, which is a black-and-white mixture with a little bit of -- one with a brown mixture.

Q More than three dogs?

A Yes. Eleven with the spaniel.

Q Okay. And you're sure, you're very sure it's the same dogs?

A I'm positive. I'm positive." (TR 28)

There was sufficient evidence on the

entire record for the trier of fact to find the Defendant guilty beyond reasonable doubt.

The final allegation of error addresses the admissibility of testimony concerning the odors and noise emanating from the dogs. (Tr 23-25, 29). Appellant objected thereto and asserts prejudice avering that the trier of fact considered same in determining the cause. Although the Court noted said evidence in rendering a finding of guilt (TR 53, 54), it specifically found Defendant was guilty beyond reasonable doubt of each and every element of the offense charged. Inasmuch as the fact that dogs produce odors and on occasion bark is judicially noticeable and further inasmuch as trial was by the Court as opposed to a jury, error, if any, must be deemed harmless beyond reasonable doubt, People v. Robinson, 386 Mich 551, 560 (1972).

For the reasons stated herein, the finding of the trial court is affirmed.

Roland L. Olzark
Circuit Judge

Dated: June 14, 1979

APENDIX "B"

STATE OF MICHIGAN

COURT OF APPEALS

NO. 46631

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

FLORENCE M. YEO,
Defendant-Appellant.

Before: Danhof, C.J., and M.J. Kelly and D.R. Sullivan, JJ.
M.J. Kelley, J.

Defendant Florence M. Yeo, by leave granted, appeals a decision of the Wayne County Circuit Court which affirmed her district court conviction for violating Redford Township Ordinance No. 150, §3-301. On November 13, 1978, the district court found that defendant had kept 11 dogs in and around her home for a period exceeding six months in violation of the following provision:

> "No person shall establish a dog kennel in this township without first obtaining a kennel license, such license to be issued for a term commencing on the date of issuance and terminating on June 1st thereafter. All persons owning, possessing, harboring, or keeping on their premises three or more dogs,

> six months old or older shall be presumed to have established a dog kennel. No such dog kennel shall be established in any R-1 or R-2 residential district or any R-1-F residential farm district, as prescribed by the zoning ordinance of this township.***"

Defendant was subsequently sentenced to one year's probation and was assessed court costs amounting to $80.00.

Defendant first argues as error the district court's refusal to dismiss the charge, upon motion and allegation that the ordinance constitutes an arbitrary and unreasonable use of the township's police power by imposing a regulation on property use not related to the public health, safety, morals or general welfare. This specific claim, relating to ordinances restricting the ownership or possession of dogs, is one of first impression in this state.

The full and free use and enjoyment of one's property is a right which may not be restricted by government without due process of law. A property owner's right to such unrestricted use is, however, subject to reasonable regulation by the state in the legimate exercise of its police powers. Roman Catholic Archbishop of Detroit v. Village of Orchard Lake, 33 Mich. 389, 392; 53 NW2d 308 (1952). And to determine the validity of a particular government proscription, a test measuring "the existence of a real and substantial relationship" between the exercise of the police powers

and the public health, safety, morals and general welfare will be applied. Grocers Dairy Co. v. Dept. of Agriculture, 377 Mich 71; 138 NW2d 767 (1966), quoting Roman Catholic Archbishop of Detroit, supra. See also Florentine Ristorante, Inc. v. Grandville, 88 Mich App. 614; 278 NW2d 694 (1979). Finally, we note the oft applied rule that legislative enactments are cloaked with a presumption of constitutionality absent a contrary showing by competent evidence or facial invalidity. Portage Twp. v. Full Salvation Union, 318 Mich 693; 293 NW2d 297 (1947), Silva v. Twp of Ada, Mich App ; NW2d (1980) Docket No. 45531, rel'd 8-27-80).

In Bugai v. Rickert, 258 Mich 417; 242 NW 774 (1932), the Supreme Court recognized "an imperfect or qualified" property interest in dogs, but also held that such property interests may be subjected to more restrictive police regulations by the state without depriving the owners of their constitutional rights. Bugai v. Rickert, supra, p 417, citing Nicchia v. New York, 254 US 228; 41 S.Ct. 103; 65 L.Ed. 235 (1920). The Bugai court further clarified the scope of the legislature's power to regulate the canine by quoting 3 C.J. 18:

> "Whether the property in dogs is regarded as qualified or absolute, they are subject to the police power of the State, and may be destroyed or otherwise dealt with, as in the judgment of the legislature is necessary for the protection of its citizens."

See also Simpson v. City of Los Angeles, 253 P.2d 464 (1953).

In State v. Mueller, Wis ; 265 NW 103, 106 (1936), the Wisconsin Supreme Court addressed an ordinance similar in intent to the Redford ordinance herein. The Court's discussion of the extent of the state's police power in this area is probative:

> "It is generally recognized that: 'The police power of the state has been used to regulate and control property in dogs to a greater extent than property in any other class of domestic animals. It is a peculiar kind of property. Such animals increase rapidly; they are usually of but little expense to their owners when allowed to run at large; and in a domestic state they retain a considerable degree of their wild mischievous, and ferocious natures."
>
> "It has become the established rule in regard to regulations restricting the number of dogs, as well as the number of other domestic animals, that may be kept in a residential district defined therein, so as to prevent such keeping in undue proximity to neighboring residences, that: In furtherance of public health, security, and comfort of its inhabitants municipal corporations may regulate the keeping of animals within the corporate limits or within designated districts of the corporation. The keeping of animals within the designated districts thereof may

> be prohibited when such keeping affects or disturbs the public health, public peace, public safety, or public decency; but only when it does so. In regulating the keeping of animals a municipal corporation may limit the number of particular animals that may be kept within the municipal limits or within designated districts thereof.'" (Emphasis added).

See also State v. Beckert, 137 NJL 562; 61 A2d 213 (1948), upholding against constitutional attack an ordinance prohibiting the ownership of "more than three dogs of licensing age" within a designated area.

We find the authorities cited above soundly reasoned regarding the validity of these restrictive ordinances.[1] Plaintiff correctly notes the importance of the regulation herein to preserve for area residents the sanitary and peaceful enjoyment of their property, as well as assuring humane treatment for the animals covered. Defendant's argument that conscientious dog owners would not pose such problems to a residential community does not meet this conclusion. The township's limited incursion on defendant's already qualified property right does not appear unreasonable, in light of the potential detriment to the public health, safety and general welfare resulting from an overabundance of dogs in certain residential areas.

Defendant next alleges that the prosecution should have been barred from charging defendant for violating the

ordinance, due to its failure to commence criminal proceedings within the two-year statute of limitations prescribed in MCL 66.6; M.S.A. 5.1726.[2] Defendant admits a continuing violation extending over 18 years prior to the instant complaint, but argues that by virtue of this extended period a variance of the zoning ordinance by prescription was acquired.

As the reviewing circuit court properly noted in its opinion, there is no support in the law for acquisition of a variance by prescription. The general rule is that the zoning authority will not be estopped to enforce its zoning ordinance absent exceptional circumstances. Township of Pittsfield v. Malcolm, 375 Mich. 135, 146; 134 NW2d 166 (1965). Clearly, there are no exceptional equities favoring defendant in the case at bar save the mere passage of time.

Defendant also alleges that the prosecution failed to present evidence sufficient to establish the third element of the offense; namely, that the dogs kept on the premises were six months of age or over. However, our review of the testimony leads to a contrary conclusion. The testimony of two witnesses at trial included descriptions of the same dogs' presence at defendant's residence for at least three years. There being no testimony to the contrary, the district court was not in error in finding the disputed dogs to be of sufficient age.

Defendant lastly contends that the trial court improperly admitted evidence of

prior bad acts of the defendant, which allegedly constituted violations of noise and sanitary ordinances. Specifically, defendant complains of testimony regarding the noise and odors emanating from her home. The admissability of such prior acts is presently governed by MRE 404(b):

> "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crime, wrongs, or acts are contemporaneous with, or prior or subsequent to the crime charged."

In People v. Worden, 91 Mich. App. 666, 682; 284 NW2d 159 (1979), this Court imposed three standards to establish a foundation for similar acts evidence: (1) Substantial evidence that defendant perpetrated the bad act, (2) That the bad act be probative of defendant's motive, intent, absence of mistake or design, scheme, plan or system in committing the charged offense, and (3)That the evidence be material to a finding of guilt for the charged offense. See also People v. Richard Johnson, Mich. App ; Nw2d (1980) (Docket No. 47338, rel'd August 12, 1980).

Under the above analysis, we conclude that an improper foundation was established

for admission of the disputed evidence. The testimony as to noises and odors was not material to the four factors establishing a violation of the ordinance: (1) possession (2) of three or more dogs (3) of six months age or greater (4) in one of the designated geographic areas. However, this conclusion does not end our inquiry. Any error in admitting such evidence must be more than mere harmless error.

In a recent case, People v. Wright and Perez, Mich. App. ; Nw2d (1980) Docket Nos. 52325, 52326, rel'd 9-2-80), this Court restated the test for harmless error. In so determining the degree of error, a dual inquiry will be applied questioning (1) whether the error was so offensive to the maintenance of a sound judicial system as to require reversal, and (2) if not, was the error harmless beyond a reasonable doubt? See also, People v. Robinson, 386 Mich. 551, 563; 194 NW2d 709 (1972).

Regarding the second inquiry, our review of the evidence discloses that each element of the charged offense was established beyond a reasonable doubt. Thus, any consideration of other acts of the defendant could not have affected the ultimate determination of guilty. Defendant's contention of reversible error is thus without merit.

Affirmed.

FOOTNOTES

1. Defendant primarily relied upon Hahn v. City of Brooklyn, 153 NE2d 359 (1958) as support for her position. The Hahn case was one arising in the Cyahoga County, Ohio Common Pleas Court, and involved the validity of an ordinance proscribing the keeping of fowl in designated residential areas. Plaintiff, a racing pigeon hobbiest, brought a declaratory judgment action to have the ordinance declared unconstitutional as bearing no reasonable relationship to the public health, safety, morals and general welfare, and as an arbitrary and unreasonable application to plaintiff who kept pigeons. The Ohio court agreed with the plaintiff and held that the prohibition against the plaintiff was made without regard to the conditions and circumstances surrounding plaintiff's hobby. In the court's view, a municipality could not make something illegal by having the city council declare it to be detrimental.

The key to this dilemma, defendant argues, is the elimination of ordinances which unduly restrict the pet owner's property interest in a pet. Defendant contends that the instant ordinance is unreasonable, since most dog breeders are careful not to permit their animals to create unsanitary conditions or to distrub other persons. However, while the Ohio case lends support to defendant's claim, the case may be factually distinguished. The evidence submitted in the Ohio case disclosed that the pigeons were not noisy, malodorous, or otherwise causing a nuisance bore heavily upon

the Ohio court's decision. The same cannot be said of the evidence presented herein.

2. The statute provides:

> "Prosecutions for violation of the village ordinances shall be commenced not more than 2 years after the commission of the offense, and shall be brought in the district court or municipal court in the judicial district in which the village is located. That court may hear, try, and determine all causes and actions arising under the ordinances of the village, and inflict punishment for violations of those ordinances as provided in the ordinances."

APPENDIX "C"

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the City of Lansing, on the 5th day of February in the year of our Lord one thousand nine hundred and eighty-two.

Present the Honorable:

Mary S. Coleman, Chief Justice
Thomas Giles Kavanaugh
G. Mennen Williams
Charles L. Levin
John W. Fitzgerald
James L. Ryan
Blair Moody, Jr., Associate Justices

CR 32-500 & a

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

SC: 66681
COA: 46631
LC: 78-83836-AR

v.

FLORENCE M. YEO,
Defendant-Appellant

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

The motion to strike reply briefs is also considered and it is DENIED.

0201

STATE OF MICHIGAN - ss

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 5th day of February in the year of our Lord one hundred and eighty-two.

Calvin R. Daniel, Deputy Clerk

Opposition

Office - Supreme Court, U.S.
FILED
MAY 27 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2009

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

FLORENCE M. YEO,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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THE INLAND PRESS, DETROIT, MICHIGAN

QUESTIONS PRESENTED

The Respondent accepts the questions set forth by Petitioner, but submits the questions were never properly presented in the State Courts of Michigan.

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No. 81-2009

IN THE

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OCTOBER TERM, 1981

FLORENCE M. YEO,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF FACTS

The Respondent is in basic agreement with the majority of facts set forth by Petitioner in her Petition for Certiorari. The Petitioner was tried and found guilty in the Redford Township District Court of violating Local Ordinance Number 150. At the time of her trial, neighbors testified that Petitioner kept eleven collies and one cocker spaniel, which were over the age of six months. The neighbors also testified that they were subjected to a great deal of noise from these dogs, as well as foul odors emanating from the Petitioner's property.

The Petitioner argued at the Trial and Appellate Levels that the Ordinance was an arbitrary and an unreasonable exercise of police power because of the numerical limitation imposed. However, the Petitioner has never properly presented to the

Michigan Courts any claims that the Ordinance is invalid due to the creation of impermissible presumptions or due to a denial of equal protection of the laws.

ARGUMENT

I.

THIS COURT IS WITHOUT JURISDICTION TO REVIEW THE JUDGMENT SUBMITTED DUE TO THE LACK OF ANY IMPORTANT FEDERAL QUESTION AND DUE TO THE MICHIGAN COURTS' RELIANCE UPON ADEQUATE, INDEPENDENT STATE GROUNDS.

It has long been the rule of this Honorable Court that it will not review judgments of State Courts which rests on adequate, independent state grounds and which do not involve important federal questions. *Dixon v. Duffy*, 342 U.S. 33, 72 S.Ct. 10, 96 L.Ed. 46 (1951); *Durley v. Mayo*, 351 U.S. 277, 76 S.Ct. 806, 100 L.Ed. 1178 (1956); *Department of Mental Hygiene of California v. Kirchner*, 380 U.S. 194, 85 S.Ct. 871, 13 L.Ed. 2d 753 (1965). The Respondent submits that the validity of the Ordinance in question has been reviewed according to the State Law of Michigan.

The various Appellant Briefs submitted by the Petitioner in the State Courts refer to two Michigan Statutes: MCLA 125.271; MSA 5.2963 (1) and MCLA 125.273; MSA 5.2963 (3). MCLA 125.271 reads in pertinent part as follows:

> Sec. 1. The Township Board of an organized Township in the State of Michigan may provide by zoning ordinance for the regulation of land· . . . to promote public health, safety and welfare.

MCLA 125.273 reads in pertinent part as follows:

> Sec. 3 The provisions of the zoning ordinance shall be based upon a plan to promote the public health, safety, morals and general welfare . . .

The issue addressed by the State Courts below has consistently been whether the Ordinance is a valid exercise of the police power granted to Townships by the Michigan Legislature. The reasonableness and validity of this Ordinance has

been examined and analyzed in light of Michigan Case Law, as shown by a review of the opinions of the Wayne County Circuit Court and the Michigan Court of Appeals. Both Courts also looked to Wisconsin and New Jersey Supreme Court decisions upholding the validity of ordinances similar to the one in question. As the above cited Michigan Statutes clearly state, any governmental regulation must bear a "real and substantial relationship" to the public health, safety, morals or general welfare. *Grocers Dairy Company v. Department of Agriculture*, 377 Mich. 71; 138 N.W.2d 767 (1966). The Respondent submits that the issue as to the validity of this Ordinance is one of state law interpretation, without involvement of any federal questions.

Furthermore, Rule 17 of the Supreme Court Rules sets forth in general the type of cases proper for review by the Supreme Court. Sub-section .1 (b) is not applicable because there have been no State appellate courts which have invalidated ordinances of this type. Sub-section .1 (c) is not applicable because this case does not involve an "important question of federal law", which is unsettled and should be decided by the Court. It is quite clear that this particular case does not possess the proper criteria for a review by this Honorable Court.

Therefore, the Respondent submits that this Court is without proper jurisdiction to review the opinion rendered by the Michigan Court of Appeals. Thus, the Petition for Certiorari should be dismissed.

II

VARIOUS STATE APPELLATE COURTS ARE IN AGREEMENT THAT LOCAL GOVERNMENTS MAY PROPERLY LIMIT THE NUMBER OF DOGS OWNED BY CITIZENS IN RESIDENTIALLY ZONED AREAS.

The Petitioner contends in Part I of her Petition for Certiorari that there is a conflict among the State Courts regarding the propriety of local ordinances limiting the number of dogs that may be owned or kept. The Respondent submits that, of

the State appellate courts reviewing this issue, all have upheld the validity of the Ordinance.

The case of *Commonwealth v. Gardner*, 74 D & C 539 (Pennsylvania Q.S. of Montour County, 1950), cited by Petitioner, is a Trial Court opinion and of no precedential effect in either the State of Pennsylvania or any other state. On the other hand, the Wisconsin and New Jersey Supreme Courts upheld ordinances similar to the one at issue in this case. See *State v. Mueller*, Wis. ; 265 N.W. 103 (1936) and *State v. Beckert*, 137 N. J. L. 562; 61 A. 2d 213 (1948). Relying upon these Supreme Court decisions, the Michigan Court of Appeals upheld the Ordinance in this case. Furthermore, the Petitioner makes reference to a Petition for a Writ of Certiorari entitled *Joseph R. Fiala v. Village of Carpentersville*, wherein the Illinois Appellate Court presumably upheld the validity of a similar ordinance.

Thus, four State Appellate Courts have reviewed the issue of whether a local government may properly limit the number of dogs owned or kept by citizens, and have unanimously agreed that such limitations are proper. No Appellate Courts of any State have decided to the contrary.

The obvious purpose behind the Ordinance is to regulate kennels and restrict kennels to certain areas of the community. Respondent submits such a regulation is totally reasonable. From a health and safety standpoint, regulating kennels prevents mistreatment of animals and insures adequate facilities and care. Restricting them from residential areas is clearly a means to preserve sanitary conditions and quiet, peaceful enjoyment to property owners. Unnecessary traffic will also be eliminated. Limiting the number of dogs in a *residential area* directly enhances a neighborhood and makes it cleaner, quieter, and generally more enjoyably for all residnets. The Ordinance supplements others relating to the control of sanitary and noise conditions in a residential area. It actually prevents arbitrary and discretionary actions by not letting one person have

three dogs, another six, and another ten. This Ordinance bears a direct, real and substantial relationship to the protection of the public.

Respondent submits that the Ordinance in question is reasonable and that the Petitioner's claim to the contrary is without merit. All State *Appellate* Courts which have reviewed this type of limitation have held that the regulation is proper. The regulation of the type and number of animals permitted in residential areas bears a direct and substantial relationship to the public good. Thus, the Respondent submits that this Petition for Certiorari should be denied.

III

THE ISSUES RAISED IN PARTS II AND III OF PETITIONER'S ARGUMENT WERE NOT PROPERLY RAISED OR DECIDED BY THE STATE COURTS OF MICHIGAN.

The United States Supreme Court will not undertake to review issues which the Courts below did not decide. *Walters v. City of St. Louis*, 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 660 (1954); *U.S. v. Donnelly's Estate*, 397 U.S. 286, 90 S. Ct. 1033, 25 L. Ed. 2d 312 (1970).

In the case at bar, Part II of the Petitioner's Argument raises the issue of whether this Ordinance creates an impermissible presumption. Part III of the Argument raises the issue of whether the Ordinance is in violation of the Equal Protection Clause. These issues were not properly presented at the State Appellate Level, and were not decided by either the Wayne County Circuit Court or the Michigan Court of Appeals. Appendix A contains the four issues which were presented by the Petitioner in her Appeals through the Circuit Court and Court of Appeals. Neither the claim of impermissible presumption nor the claim of denial of equal protection were presented.

The Petitioner did attempt to present these issues to the Michigan Court of Appeals by way of Supplemental Brief, filed

after her Appeal Brief. However, the Respondent filed a Motion to Strike this Supplemental Brief because the Michigan Court Rules do not permit such a Brief, and Petitioner sought to raise new issues never before raised or argued in the Courts below. The Michigan Court of Appeals granted the Respondent's Motion, the Brief was striken, and the Court specifically did not include in its decision those issues raised in the Brief. The Order of the Court of Appeals granting the Motion to Strike is set forth in Appendix B. The Petitioner filed an Application for Leave to Appeal to the Michigan Supreme Court, in an effort to obtain a reversal of the Court of Appeals Order striking the Supplemental Brief. However, the Michigan Supreme Court denied the Application for Leave to Appeal. This Order is set forth in Appendix C.

The issues presented is Parts II and III of the Petition for Certiorari are not properly before this Court, in that they were never decided by the lower Courts. Specifically, both issues were stricken by the Michigan Court of Appeals. In that these are the only two questions presented at Page i of Petitioner's Petition for Writ of Certiorari, this Court must deny the Petition.

CONCLUSION

The Judgment sought to be reviewed in this matter rests upon questions of state law rather than federal law, and therefore, is not within the jurisdiction of this Court. In addition, the Ordinance limiting the number of dogs a person may own or keep in a residential area is reasonable in that it directly relates to the protection of the general public.

WHEREFORE, the Respondent prays this Honorable Court deny this Petition for Writ of Certiorari.

Respectfully submitted,
CUMMINGS, McCLOREY, DAVIS & ACHO, P.C.

BY: _____
Bernard P. McClorey

BY: _____
Susan D. Nelson

DATED: 5-25-82

Appendix

I

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APPENDIX A

STATEMENT OF QUESTIONS INVOLVED

I.

DOES THE ORDINANCE RESTRICTING THE KEEPING OF THREE OR MORE DOGS ON PROPERTY ZONED R-1, R-2 or R-1-F OR WITHOUT A KENNEL LICENSE CONSTITUTE AN UNREASONABLE EXERCISE OF THE TOWNSHIP POLICE POWER?

Trial Court held: No.
Appellant argues: Yes.

II.

ARE THE PEOPLE FORECLOSED DUE TO THE PASSAGE OF TIME FROM PROSECUTING THE APPELLANT FOR HER VIOLATION OF THE ORDINANCE HEREIN?

Trial Court held: No.
Appellant argues: Yes.

III.

DID THE PEOPLE INTRODUCE EVIDENCE AT THE TRIAL SUFFICIENT TO JUSTIFY FINDING THE APPELLANT GUILTY BEYOND A REASONABLE DOUBT?

Trial Court held: Yes.
Appellant argues: No.

IV.

DID THE TRIAL COURT ERR IN ADMITTING AT TRIAL EVIDENCE OF OTHER UNRELATED ACTS OF THE APPELLANT WHICH MAY HAVE PROVED UNCHARGED VIOLATIONS OF OTHER ORDINANCES AND DID THE ADMISSION THEREOF PREJUDICE THE APPELLANT?

Trial Court held: No.
Appellant argues: Yes.

APPENDIX B

AT A SESSION OF THE COURT OF APPEALS OF THE STATE OF MICHIGAN, Held at the Court of Appeals in the City of Detroit, on the twenty-sixth day of June in the year of our Lord one thousand nine hundred and eighty.

Present the Honorable
JOHN H. GILLIS
Presiding Judge
NATHAN J. KAUFMAN
RICHARD M. MAHER
Judges

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,
v Docket # 46631
FLORENCE M. YEO,
Defendant-Appellant. L. C. #78-838369 AR

In this cause a motion to strike brief filed by David C. Sloan is filed by plaintiff-appellee, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion to strike brief filed by David C. Sloan, be and the same is hereby, GRANTED.

STATE OF MICHIGAN — ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 27th day of June in the year of our Lord one thousand nine hundred and eighty.

Clerk

APPENDIX C

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 3rd day of December in the year of our Lord one thousand nine hundred and eighty.

Present the Honorable
MARY S. COLEMAN,
Chief Justice
THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.,
Associated Justices

PEOPLE OF THE STATE OF MICHIGAN,	
Plaintiff-Appellee,	SC: 65468
v	COA: 46631
FLORENCE M. YEO,	LC: 78-838369-AR
Defendant-Appellant.	CR 30-365

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the question presented should now be reviewed by this Court.

STATE OF MICHIGAN—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 3rd day of December in the year of our Lord one thousand nine hundred and eighty.

Deputy Clerk